



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

JUL 14 2011

E-MAIL: greg.fontaine@leonard.com, bbaratta@freebornpeters.com
AND U.S. MAIL

Gregory A. Fontaine, Esq.
Leonard, Street and Deinard
150 South Fifth Street Suite 2300
Minneapolis, MN 55402

Robert M. Baratta, Jr., Esq.
Freeborn & Peters LLP
311 South Wacker Drive Suite 3000
Chicago, IL 60606-6677

RE: Special Notice Letter for the Ashland/Northern States Power Lakefront Site
Ashland, Wisconsin

Dear Messrs. Fontaine and Baratta:

By letter dated June 30, 2011, Wisconsin Central Ltd. (WCL) and Soo Line Railroad (Soo Line) (collectively, the Railroads) responded to EPA's Special Notice Letter dated April 27, 2011. The Special Notice Letter contained a formal demand for reimbursement of EPA's response costs at the Site and notification that a 60-day period for formal negotiations had begun for reimbursement of costs and for performance of the remedial design/remedial action (RD/RA) described in the September 30, 2010 record of decision (ROD) for the Site.

The Special Notice Letter stated that if the Railroads submitted a "good faith offer" within 60 days, EPA would extend the negotiation period for an additional 60 days and described seven elements for a "good faith offer." Three of these elements are: 1) a statement of willingness to conduct or finance the RD/RA that is consistent with the Statement of Work (SOW) and Consent Decree (CD) that were attached to the Special Notice Letter and provides a sufficient basis for further negotiations; 2) a detailed description of the work plan to proceed with the work; and 3) a statement of willingness to reimburse EPA for past costs and future costs.

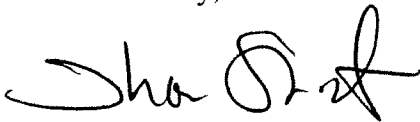
The Railroads offer to conduct and/or fund additional environmental investigation of the railroad right-of-way (ROW) and make a combined lump sum payment of \$400,000 to reimburse EPA a portion of its past costs to date. In the alternative, the Railroads offer to make a single lump sum payment of \$1 million in exchange for a *de minimis* settlement under Section 122(g) of CERCLA.

The Railroads' offer does not satisfy the elements of the good faith offer because it does not, among other things, include a statement of willingness to conduct or finance the RD/RA, does not provide a detailed description of a work plan, and does not demonstrate a willingness to reimburse EPA's response costs. EPA does not believe that a separate investigation of the ROW is consistent with the ROD and would not provide any additional benefit toward implementation of the remedy selected in the ROD. A lengthy and complete investigation of the entire Site, including the ROW, was conducted during the Remedial Investigation and Feasibility Study. In addition, EPA does not believe that a *de minimis* settlement is appropriate at this time and is not prepared to evaluate the reasonableness of \$1 million for such a settlement. EPA's goal is to achieve implementation of the remedy and this *de minimis* settlement offer would not help achieve that goal. EPA finds that the Railroads' offer does not meet the elements of a "good faith offer" and declines to extend the moratorium on taking enforcement actions for an additional 60-day period.

Despite the fact that EPA has declined to extend the 60-day moratorium on taking enforcement actions, we will continue to negotiate with the Railroads and the other parties in an effort to reach a settlement with all of the parties who received the Special Notice Letter. Toward that end EPA is willing to meet with the Railroads as requested in the June 30th letter. We also encourage the Railroads to continue to work with the other parties in the hope that the Railroads will enter into a group settlement with EPA for the RD/RA. EPA reserves the right, however, to initiate enforcement actions at the Site including issuing an order under CERCLA Section 106(a), 42 U.S.C. §9606(a), to protect public health and welfare and the environment.

Should you have any questions about this letter please do not hesitate to contact the attorney for the Site, Craig Melodia at 312 353-8870, or the project manager, Scott Hansen at 312 886-1999.

Sincerely,

A handwritten signature in black ink, appearing to read "Short" followed by a stylized flourish.

Thomas R. Short, Jr.
Chief, Remedial Response Branch #2

cc: Dan Graff, WDNR
Tom Benson, U.S. DOJ